

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-1307

CAILIN A. JAMES

vs.

ADAM J. KREUSER.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Cailin James (mother), appeals from two judgments, issued by a judge of the Probate and Family Court, adjudicating her former husband Adam Kreuser (father) not guilty of contempt of court.¹ The mother's two separately filed contempt complaints alleged that the father violated court orders by refusing to (1) notify her of their minor child's psychiatric hospitalization, (2) allow their children to have contact with their maternal relatives, and (3) provide access to the children for the mother's supervised visitation. On appeal, the mother contends that the judge abused her discretion; however, the mother has

¹ The mother also raises on appeal the judge's alleged refusal to (1) allow her complaint for modification to be docketed, and (2) attend the contempt hearing by telephone. Her arguments on these points are insufficient to raise an issue worthy of appellate review, and so we do not address them. See Mass. R. A. P. 16 (a) (4), as appearing in 481 Mass. 1628 (2019).

failed to provide this court with an adequate record for review.

See Connolly v. Connolly, 400 Mass. 1002, 1002 (1987)

(appellant's burden to provide court with record necessary for review). The mother did not provide an official transcript as required by Mass. R. A. P. 8 (b) (1) (A), as appearing in 481 Mass. 1611-1612 (2019).² Nor did the mother provide complete copies of the orders allegedly violated, the contempt complaints, or judgments thereon.³ See Roby v. Superintendent, Massachusetts Correctional Inst., 94 Mass. App. Ct. 410, 412 (2018) (failure to provide adequate record generally fatal to appeal).

In any event, the record that has been provided to this court fails to substantiate the mother's claims. A civil contempt finding must be supported by clear and convincing evidence of disobedience of a clear and unequivocal command. See K.A. v. T.R., 86 Mass. App. Ct. 554, 567 (2014). Here, the mother alleged in her first contempt complaint filed on April 26, 2018 (first contempt complaint) that a May 8, 2012 order (incorporating the parties' separation agreement) required the

² The transcription service, which was not approved by the trial court, was "Rev.com." Rather than certifying the accuracy of the transcript, the individual transcriptionist asked to be rated on a five-star scale: "How did Shoshana do? If you rate this transcript 3 or below, Shoshana S will not work on your future orders."

³ The father filed a supplemental record appendix including these items.

parties to notify each other in case of a medical emergency involving a child, and that the father violated this provision by failing to notify her of their child's psychiatric hospitalization. Yet, a September 11, 2014 order (incorporating a stipulation of the parties) gave the father sole legal and physical custody of the children and specifically prohibited the mother from having access to "any therapeutic records of the children," although she was entitled to access "medical and dental records." Under the circumstances, the judge could well have determined that the father's obligation to notify the mother in case of a psychiatric emergency was unclear. Indeed, the judge sought to clarify the obligation by entering the judgment dated June 7, 2018, on the first contempt complaint. There was no abuse of discretion. See K.A., supra (judge's ultimate conclusion on contempt finding reviewed under abuse of discretion standard).

With respect to the mother's other allegation included in the first contempt complaint that the father prohibited the children from contact with their maternal relatives, the father disputed this claim. He testified that he did allow contact but requested that the contact be established through him, rather than with the children directly. The judge evidently credited the father and approved of his methods as indicated by the language contained in the June 7, 2018 judgment. The judge was

well within her discretion to credit the father's account and, further, to determine that his conduct did not violate the May 8, 2012 order.⁴ See Whelan v. Whelan, 74 Mass. App. Ct. 616, 620 n.7 (2009).

As to the mother's claim alleged in her second complaint for contempt filed on April 26, 2018 (second contempt complaint), that the father violated the September 11, 2014 order by denying her supervised visitation with the children, the parties had different accounts about why the visits did not take place. The judge apparently did not credit the mother's account that the father was to blame. This she was entitled to do. See Whelan, 74 Mass. App. Ct. at 620 n.7.

The mother additionally argues here that the judge erred in including in the judgment dated June 12, 2018, on the second contempt complaint an order requiring the mother's future supervised visits to take place at a visitation center. The September 11, 2014 order noted that the mother's "current visitation schedule" was one visit per week, supervised for one hour on Saturdays. Although the judge acknowledged that the

⁴ In her brief, the mother did not identify which provision of the May 8, 2012 order was violated by the father's alleged conduct. Her complaint for contempt listed various pages and paragraphs of the order, but the entire order has not been provided to this court. We therefore are left to base our determination on the portion of the order that has been provided to this court on appeal.

September 11, 2014 order did not specify that visits must take place at a visitation center, she noted that visits had been taking place at a visitation center pursuant to a temporary order in effect at the time of the September 11, 2014 order. While this may have been the case, the September 11, 2014 order did not require visitation to take place at a visitation center. To the contrary, the order directed the parties to retain a guardian ad litem, whose first task would be to address "whether supervised visitation in a supervised visitation center is the most appropriate forum for current visitation" Thus, the judgment dated June 12, 2018, did not clarify an ambiguous provision of the September 11, 2014 order; rather, it inappropriately modified the order in the context of a contempt proceeding.⁵

The judgment dated June 8, 2018, is affirmed. The portion of the judgment dated June 12, 2018, requiring the mother's supervised visitation with the children to take place at a visitation center, is stricken. The remainder of that judgment

⁵ We are able to review this issue based on the September 11, 2014 order and the judgment dated June 12, 2018, complete copies of which have been provided as part of the record on appeal.

is affirmed.

So ordered.

By the Court (Rubin, Kinder &
Singh, JJ.⁶)

A handwritten signature in blue ink that reads "Joseph F. Stanton". The signature is written in a cursive, flowing style with a large initial "J".

Clerk

Entered: July 16, 2019.

⁶ The panelists are listed in order of seniority.